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Attn:	Krista Zele	Client:	1135.36
Fax:	(703) 746-5919	Pages:	7 including coversheet
Phone:	(703) 305-4701	Date:	August 3, 2004
Re:	USPN: 10/605,202	CC:	
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Practitioner's Docket No. 1135.36

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John F. Baxter, Jr.
Application No.: 10/605,202
Filed: 09/15/2003
For: Audio Content Distribution System

Group No.: Not yet assigned
Examiner: Not yet assigned
Confirmation No.: 2201

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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**PETITION TO MAKE SPECIAL FOR NEW APPLICATION
UNDER M.P.E.P. section 708.02, VIII**

1. Petition

Applicant hereby petitions to make this new application, which has not received any examination by the Examiner, special.

2. Claims

All the claims in this case are directed to a single invention. If the Office determines that all the claims presented are not obviously directed to single invention, then applicant will make an election without traverse as a prerequisite to the grant of special status.

3. Search

Undersigned attorney made a search in the U.S. Patent and Trademark Office (PTO) in Washington, D.C. The following is a list of the patents that were selected as being relevant to the invention.

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Group Art: Not yet assigned

Patent References:

<u>Inventor</u>	<u>Patent Number</u>	<u>Year</u>
Gioscia et al.	WO00/31906	2000
Sako et al.	EP0991213A2	2000
Rouchon	US2001/0025259	2001
Marko et al.	6,347,216	2002
Patsiokas et al.	WO02/099789	2002
Ma et al.	6,563,805	2003
Marko et al.	6,564,003	2003
Hilt et al.	US2003/0043184	2003

4. Copy of references

There is submitted herewith a copy of the references deemed most closely related to the subject matter encompassed by the claims.

Also attached is Form PTO-1449. (PTO/SB/08A).

5. Detailed discussion of the references

There is submitted herewith a detailed discussion of the references, which discussion particularly points out how the claimed subject matter is distinguishable over the references. Copies of references already filed and of record are not included herewith. MPEP §708.02(VIII)(D).

Applicant claims A method of distributing audio content transmitted over radio comprising the steps of: (1) assigning a user identification value to a subscriber; (2) storing contact information on the subscriber linked to the user identification value; (3) assigning a channel identification value to a radio station channel; (4) assigning an audio content value to an audio recording played over the radio transmission; (5) generating a play database storing the time at which each audio recording was played on each radio station; (6) receiving a signal having a user identification value and a channel identification value; (7) cross-referencing the play database for the audio content value of the audio recording played on the radio station at the time the signal was received; and (8) transmitting data associated with the audio content value to the subscriber according to the stored contact information.

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Section 102 of the United States Patent Laws provides in relevant part:

A person shall be entitled to a patent unless . . . the invention was known or used by others in this country, or patented or described in a written publication in this or a foreign country . . .

None of references obtained in the prior art search disclose or describe Applicant's invention.

Section 103 of the United States Patent Laws provides in relevant part:

A patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

No combination of references obtained in the prior art search teaches or suggest Applicant's invention.

U.S. Patent No. 6,563,805 to *Ma et al.* describes a device for prepaid recording of digital audio signals. The patent describes a method wherein encrypted music is sent to a receiver which prevents recording of the audio content (col. 2, lines 16-24). The receiver holds a "Smartcard" which keeps track of the user's account balance (co. 2, lines 24-26). If the balance in the account is sufficient the encrypted data is decrypted by the receiver and can then be recorded by the user (col. 2, lines 26-31). However, the '805 patent does not describe a method wherein the user activates a device which sends a signal containing a timestamp, channel identification, and user identification.

International Publication No. WO 00/31906 and related European Patent Application No. 99119395.4 to *Sony Electronic, Inc.*, hereinafter the '906 application, describe a method and system for interactive digital radio broadcasting and a method and device for transmitting, receiving, and transferring said digital information, respectively. The '906 application describes a method and system wherein contextual information is broadcast along with the audio content (col. 4, lines 6-11). The contextual and audio content are then parsed and made available to the user (col. 4, lines 12-18). Additionally, a memory card is used to store the contextual information for later retrieval to facilitate ordering or recording of the audio content (col. 4, lines 32-35). This method requires the coupling of the audio content and additional information in the data stream. The '906 application does not describe a method or system whereby the transmitting infrastructure is not altered or wherein the information gathered is only done so at the request of the user, as with the present invention.

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U.S. Patent No. 6,564,003 to *Marko et al.* describes a method and apparatus for creating a composite data stream containing multiple channels of content. The '003 method as described allows a user to record the entire data stream and select the desired content through an apparatus which de-multiplexes the data by accessing the header information which identifies where in the composite stream the desired content resides (col. 3, lines 1-5). The '003 method, however, requires a composite data stream to be created and a special decoder to access and play the relevant content.

U.S. Patent No. 6,347,216 to *Marko et al.* describes a method for providing geographic specific services via a satellite communication network. The system uses a terrestrial transponder which sends a signal containing identification information (col. 2, lines 25-30). The satellite then recognizes the signal and transmits predetermined geographic-specific content to the corresponding receiver (col. 2, lines 35-49). The '216 patent does not teach the application of using the identifying signal to retrieve information regarding user-specific content transmitted at any given time.

Applicant believes the remaining references to be less relevant to the patentability of Applicant's invention. However, a summary of each remaining reference is provided to illustrate the field of search. U.S. Patent Application No. US2001/0025259, to *Rouchon*, describes a system and method of distributing music to radio station listeners over a public computer network. The patent describes a method whereby individual or independent artists can make their music available to consumers, digitally, without the need of large corporate marketing resources. The method is dependant on access to, and use of, the Internet to deliver the audio content.

European Patent No. EP0991213A2, to *Sako et al.*, describes a method and device for transmitting and receiving digital information. The method of the patent requires a constructing step wherein additional information is combined in the data stream with the entertainment content (col. 2, lines 11-20). The patent does not teach or suggest a method whereby no new information is included with the data stream.

International Publication No. WO02/099789, to *Patsiokas et al.*, describes a method and apparatus for digital audio playback using locally stored content. This patent is clearly distinguishable from the current application in that the data stream received is a digitally encoded bit stream containing a plurality of communication resources and each of the plurality of the resources contains content and associated index information (page 2, lines 27-30), whereas the subject of the current application does not require an indexed data stream to be sent to the receiver. Instead the target entertainment content is identified when a source specific signal, containing timestamp information, is generated by the user. The necessary indexing information need not be transmitted but is stored locally in the master database, thus obviating the need for a larger data stream.

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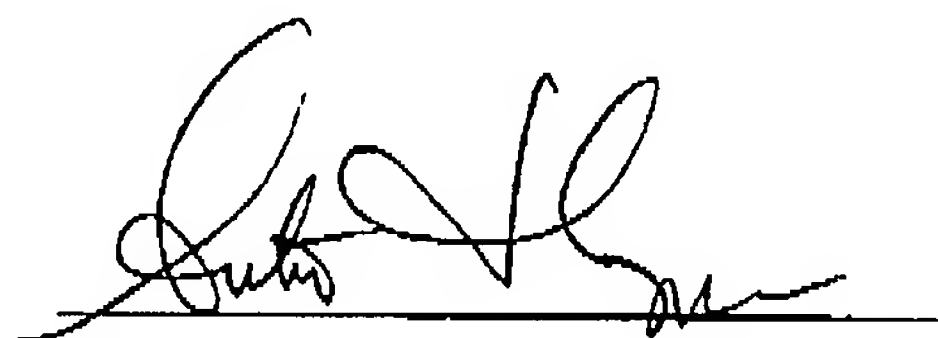
Serial No.: 10/605,202
Filing Date: 09/15/2003

Examiner: Not yet assigned
Group Art: Not yet assigned

U.S. Patent Application Publication No. US2003/0043184, to *Hilt et al*, describes a bi-directional communication system for use with an XM Radio system. However, the method of the patent requires the coupling of the XM Radio receiver with a home computer and integrated web-browser plug-in. (page 1, par. 10). Whereas the subject of the current application exists on a stand alone basis.

6. Fee

The fee required by 37 C.F.R. 1.17(i) is to be paid by the attached check for \$130.00



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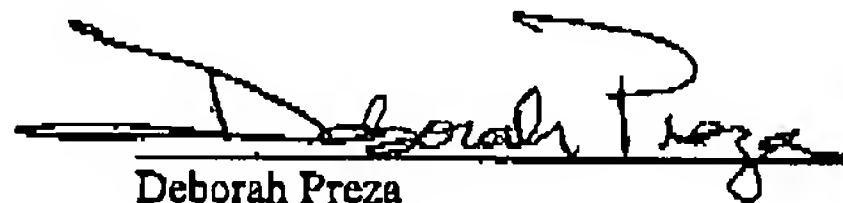
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CERTIFICATE OF MAILING (37 C.F.R. § 1.8)

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Date: September 26, 2003


Deborah Preza

Petition to Make Special for New Application Under M.P.E.P. section 708.02, III- Page 5

RECEIVED IN		UNITED STATES PATENT AND TRADEMARK OFFICE
Applicant:	John F. Baxter, Jr.	
Serial No.:	10/605,202	
Filed:	09/15/2003	
For:	Audio Content Distribution System	
Art Unit:	Unassigned	
Examiner:	Unassigned	
Confirm:	2201	
Our Ref.:	1135.36	

Transmittal of Petition to Make Special having a Certificate of Mailing dated September 26, 2003 (1 page);
Petition to Make Special for New Application under M.P.E.P. 708.02, VIII (5 pages);
Information Disclosure Statement by Applicant – Form PTO/SB/08A (1 page);
Copies of five (5) U.S. Patent Documents;
Copies of three (3) Foreign Patent Documents; and
Check No.: 0769 for \$130.00 payable to Assistant Commissioner for Patents.



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